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CHARLES ELMORE CROPLEY

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1942

No. 494

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BIG-BRA

S. C. BIGELOW, as Receiver of Virginia & Truckee Railway (a corporation), and Virginia-Truckee Transit Co. (a corporation),

Petitioner,

vs.

H. A. ANDERSON, Individually and as President and Business Agent of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 533 of Reno, Nevada,

Respondent.

PETITION FOR A WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Ninth Circuit and BRIEF IN SUPPORT THEREOF.

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to the United States Circuit Court of Appeals
for the Ninth Circuit.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

The petition of S. C. Bigelow, receiver above named, prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Ninth Circuit entered in the above entitled cause on July 23, 1942 (R. 148-149) reversing the judgment and decree of the District Court of the United States for the District of Nevada (R. 112-115) and respectfully shows:

I.

SUMMARY STATEMENT OF MATTER INVOLVED.

On June 10, 1940, petitioner, as receiver of Virginia & Truckee Railway and Virginia-Truckee Transit Company, Nevada corporations (herein called the railway company and the transit company respectively) filed in the trial court his petition for instructions and for a restraining order (R. 2-14), in which it is alleged that acting under the court's appointment as such receiver he is operating as a common carrier of passengers, freight and mail in interstate and intrastate commerce; that the respondent H. A. Anderson, as president and business agent of International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 533 of Reno, Nevada (herein called respondent union) had presented to petitioner for his execution certain wage and working agreements (R. 15-24) which contemplated the appointment of respondent union as the authorized bargaining agent of petitioner's truck drivers (R. 4), and that

respondent union had informed petitioner that unless said agreements were so executed on or before June 11, 1940, strikes would be called among petitioner's employees and his places of business picketed by respondent union (R. 4-5). That in the situation thus presented petitioner sought definite instructions from the trial court as to whether in his capacity as receiver he had authority to sign such agreements, and pending determination of the issue presented asked that the respondent union be enjoined from interfering with petitioner's operations (R. 8-14).

The trial court having issued its temporary restraining order as prayed for (R. 27-33), and having thereafter denied respondent union's motion to dissolve said order (R. 34-38), respondent union answered said petition (R. 48-53); and upon the issues thus joined trial was had on the merits, and said district court thereupon rendered its opinion and decision holding that the Interstate Commerce Commission has jurisdiction to regulate the hours of labor of petitioner's truck drivers, and that as to other matters respecting said employees, (i.e., their labor relations with petitioner) the provisions of the Railway Labor Act are applicable, and ordered that petitioner have a permanent injunction as prayed (R. 82-87; Vol. 31 Fed. Supp. 35). Findings were thereupon signed (R. 105-111), and the trial court's final judgment and decree entered in accordance therewith (R. 112-115).

The respondent union appealed from said final judgment and decree on the merits on May 21, 1941

(R. 115). Said appeal was heard before the Circuit Court of Appeals for the Ninth Circuit which, by a divided court, handed down its decision on July 23, 1942, reversing the judgment and decree of the district court on the merits, and holding that the district court was deprived of jurisdiction to issue said injunction by the Norris-La Guardia Act, and that the receiver's petition should be dismissed (R. 133-142; Vol. ..... Fed. Rep. (2d) .....). A dissenting opinion was filed on the same day (R. 142-148; Vol. ..... Fed. Rep. (2d) .....). The decree of that court to which this petition for certiorari is directed was signed in the Circuit Court of Appeals on July 23, 1942 (R. 148-149). Petitioner duly filed his petition for rehearing on August 19, 1942, which was denied on August 25, 1942 (R. 150). Order staying the mandate was filed September 8, 1942.

The pertinent facts in this proceeding are:

The railway company, a steam railroad engaged in transporting freight and passengers in both interstate and intrastate commerce, obtained on August 18, 1939, a franchise permitting it to haul over-the-highways, by motor truck the less-than-carload freight which immediately prior thereto had been hauled for its account by its wholly owned subsidiary, the transit company. The railway company inauguarated this truck service handling less-carload freight on September 21, 1939; and thereupon, and particularly after June 1, 1940, the transit company ceased to transport any freight, and confined its services to the transportation of passengers, express and mail (R. 57). The

railway company maintains through joint rates with Southern Pacific Company and Western Pacific Railway Company. By far the greater proportion of its business is interstate in character; 98% to 99% of its carload business, and about 66⅔% of its less-than-carload business being interstate; and these figures do not include outbound interstate freight originating in Nevada. In addition to passengers and freight the railway company also handles United States mail (R. 55). In its steam-rail operations the railway company employs 30 to 35 men (R. 55); in the operation of its over-the-highway truck service, it handles practically all classes of less-than-carload freight, and employs 16 or 17 men, including 4 regular truck drivers and 1 extra truck driver. All of these employees are carried on the railway company's payroll, and deductions are made from their paychecks under the provisions of the Railroad Retirement Act (R. 55-56).

The railway company's purpose in initiating the handling of less-carload freight by truck over the highways was to reduce operating expenses incident to the rail transportation of such freight, and to place its service on a parity with that of competing carriers, by improving service to its patrons (R. 56).

In April, 1940, respondent union presented to petitioner two forms of contract setting forth proposed terms and conditions of employment for the 4 or 5 truck drivers who were members of said union and in petitioner's employ (R. 58-59). Petitioner's relations with all of said truck drivers are friendly, and they have no grievances against petitioner (R. 72, 73, 75).

Efforts to negotiate as to these proposed contracts failed (R. 58-59); and respondent union delivered what was in effect an ultimatum to petitioner, giving him until a day certain to sign the proposed agreements (Exhibit "A" and Exhibit "B", R. 15-24), or petitioner's drivers would be taken off the job (R. 78). Unless an agreement could be concluded by ordinary persuasive methods, respondent union would resort to strike, picketing and boycott (R. 61). Although the agreements as presented were not signed by petitioner he was at all times ready and willing under proper instructions from the court to negotiate an agreement with the duly authorized bargaining agency (R. 78-79); but he had been advised by his attorney that negotiations for an agreement should be carried on under the terms of the Railway Labor Act, and not under the Wagner Act (R. 79-81).

II.

QUESTIONS PRESENTED.

A.

When a steam railroad common carrier engages, for its own account and as an integral and component part of its transportation activity, in the transportation of interstate and intrastate freight by its own motor trucks as a substitute for previously conducted rail transportation of such freight, is such rail carrier governed, in its labor relations with the employees who drive its said trucks, by the Railway Labor Act (45 U. S. Code 151-163), or by the Norris-La Guardia

Act (29 U. S. Code 101-115) and the National Labor Relations ("Wagner") Act (29 U. S. Code 151-166)?

B.

Does Section 2 (Fifth) of the Railway Labor Act (45 U. S. Code 152, Fifth), which forbids railroad carriers from requiring their employees to sign agreements to join or not to join a labor organization, apply with equal force with respect to all employees of such carriers who are actually engaged in the operation of vehicles of transportation, whether on rail lines or over the highways?

C.

Is any distinction to be drawn, under the Railway Labor Act, the Railroad Retirement Act, and the Railroad Unemployment Insurance Act, between a railroad carrier's employees who handle and transport freight in interstate and intrastate commerce by the instrumentalities of steam-railway service, and other employees of the same carrier who are engaged as truck drivers in the transportation of like freight by the use of motor vehicles in over-the-highway carriage, in either the handling and settlement of labor disputes, under the Railway Labor Act, or in the enjoyment of employee rights and privileges under the Railroad Retirement and Unemployment Insurance Acts?

III.

REASONS FOR GRANTING THE WRIT.

1. The questions involved in this case are governed by federal law, and have not been, but should be, settled by this court.

This case is primarily one of first impression, although related questions which bear upon the issues have been determined by this Honorable Court and by Appellate Courts in other jurisdictions, as appears in the supporting brief accompanying this petition.

A review of the foregoing questions by this court will set at rest much doubt, avoid a multiplicity of suits, and promote orderly administration of the several labor acts governing employer-employee relations of both carriers and industrialists engaged in interstate commerce.

It is reasonable to apprehend that in the ordinary course of events the questions here presented will be frequently raised, by reason of the recently developed and increasing tendency of railroad companies to expand their operations so as to furnish their patrons with truck service both to points off-rail, and to rail points where deemed necessary to meet the competition of independent truck lines. Hence a final decision by this Honorable Court, establishing a uniform and reasonable rule, is of great importance to the general public, as the decree of the Circuit Court if allowed to stand, will have far-reaching effect, and result in uncertainty and confusion among employers and employees alike whose activities are concerned with transporting over-the-highway interstate freight by

motor vehicle as an integrated part of railroad common-carrier operations.

Furthermore, if the decision of the Circuit Court of Appeals is allowed to stand, it will require a reversal of uniform and long-continued departmental constructions placed upon provisions of the Interstate Commerce Act and of the Railroad Retirement Act by the governmental bodies administering those respective acts. For that reason it is respectfully submitted that the case at bar is within the class of cases over which this Honorable Court should exercise its powers of supervisory review.

2. The decision of the Circuit Court of Appeals for the Ninth Circuit in the instant case is believed to be in conflict with the decisions of this Honorable Court, in the following cases:

Virginian Ry. Co. v. System Federation No. 40, 300 U. S. 515, 81 L. Ed. 789, in which it was held that the requirements of Sec. 9 of the Norris-La Guardia Act, in relation to restraining orders, do not apply to an injunction issued to enforce the collective bargaining provisions of the Railway Labor Act, and that the Norris-La Guardia Act could affect the decree in that case only in so far as its provisions were not in conflict with pertinent provisions of the Railway Labor Act;

Texas & N. O. R. Co. v. Railway Clerks, 281 U. S. 548, 74 L. Ed. 1034, in which it was held that an injunction should issue to compel the observance of the duties and obligations imposed by the Railway Labor Act.

American Truck Association v. U. S. (310 U. S. 534, 84 L. Ed. 1345; reh. den. 311 U. S. 724, 85 L. Ed. 472), wherein this court upheld the authority of the Interstate Commerce Commission to regulate qualifications and minimum hours of service of those employees of carriers by motor vehicles whose duties affect the safety of operation, as vehicles regulated by the Motor Carrier Act of 1935.

The decision in the instant case is at variance with departmental constructions placed upon pertinent provisions of the Railroad Retirement Act under rulings promulgated by the Railroad Retirement Board in the following matters:

Blue Line Transfer Co. (Baltimore & Ohio RR. Co.; Vol. 1, Railroad Retirement Board Law Bulletin, 99-102);

Texas and Pacific Motor Transport Co. (Id. 80);

Northern Pacific Transport Co. (Id. 87);

Pacific Motor Transportation Co. (Id. 91);

Evansville and Ohio Valley Railroad Co. (Id. 108);

Buffalo, Rochester and Pittsburgh Warehouse Inc. (Id. 112);

Southern Pacific Transport Co. (Texas, The Southern Pacific Transport Co. of Louisiana, Inc.) (Id. 115);

Missouri Pacific Freight Transport Co. (Vol. 2, R.R. Law Bull., 43-44).

IV.

STATUTES INVOLVED.

Norris-LaGuardia Act (29 U. S. C. A. 1941 Supp., Chap. 6, Secs, 101, 102, 104 (a, b, c. d, e, f, g, h, i), 107 (a, b, c, d, e), 108, 113 (a, c);

National Labor Relations Act (29 U. S. C. A. 1941 Supp., Chap. 7, Secs. 151, 152 (2, 3), 157, 158 (1, 3, 5), 159 (a, b, c), 160 (a, b, e, f, g, h, i), 163);

Interstate Commerce Act (Chap. 1, 49 U. S. C. A. 11, Sec. 1(3); and Chap. 1, 49 U. S. C. A., 1941 Supp., p. 3);

Railway Labor Act (45 U. S. C. A., 1941 Supp., Chap. 8, Secs. 151 (First), (Fifth), Sec. 151A, 152 (First-Sixth), Sec. 153 (a, b, i, l);

Railroad Retirement Act (45 U. S. C. A., 1941 Supp., Sec. 228A (a, b);

Railroad Unemployment Insurance Act (45 U. S. C. A., 1941 Supp., Sec. 351 (a, b, d).

Your petitioner attaches hereto his brief in support of this petition, which is followed by an appendix quoting the pertinent sections of the above designated statutes.

Wherefore: your petitioner prays that a Writ of Certiorari may be issued out of and under the seal of this honorable court, directed to the United States Circuit Court of Appeals for the Ninth Circuit commanding that court to certify and to send to this court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, "No. 9886, H. A. Anderson,

Individually and as President and Business Agent of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 533 of Reno, Nevada, Appellant, vs. S. C. Bigelow, as Receiver of Virginia & Truckee Railway (a corporation) and Virginia-Truckee Transit Company (a corporation) Appellee," and that said decree of said United States Circuit Court of Appeals for the Ninth Circuit may be reversed by this honorable court and that your petitioner may have such other and further relief as to this honorable court may seem meet and just.

Dated, San Francisco, California,
October 21, 1942.

HENLEY C. BOOTH,
BURTON MASON,
Attorneys for Petitioner.

DUNCAN A. MCLEOD,
WALTER ROWSON,
Of Counsel for Petitioner.

CERTIFICATE OF COUNSEL.

I certify that I have examined the foregoing Petition, that in my opinion it is well founded and entitled to the favorable consideration of the court and that it is not filed for the purpose of delay.

Dated San Francisco, California,
October 21, 1942.

BURTON MASON,
Attorney for Petitioner.